

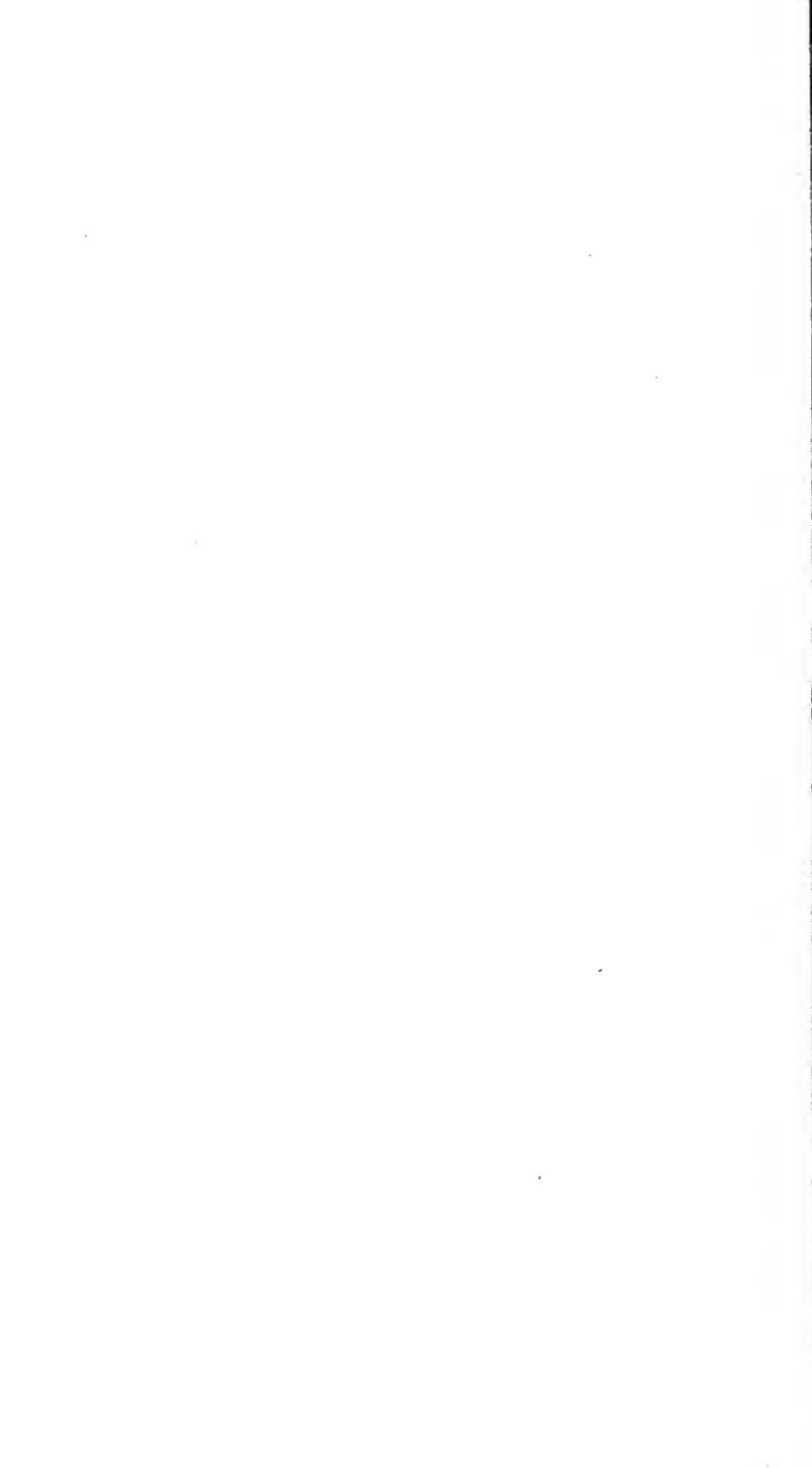


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A

L E T T E R
TO THE
COMMON COUNCIL
OF THE
CITY of LONDON.

With REMARKS on
Lord Chief Justice PRATT's Letter

TO THE

CITY of EXETER.

By Owen Ruffhead Esq. of the Temple.

L O N D O N:

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TO THE
COMMON COUNCIL
OF THE
CITY of LONDON.

GENTLEMEN,

THE late extraordinary *Resolutions*, which you have declared with respect to public transactions and characters, must necessarily have drawn the attention of your fellow-citizens, towards the subject of those resolutions.

As the acts which you perform in your corporate capacity, are generally followed, too implicitly followed, by other corporations in this kingdom, it behoves you to be more particularly cautious and circumspect, before you take the lead on public occasions.

It is your duty, in the first place, to be well assured that the matter of your deliberation, is proper for your cognizance: And, before you determine, you should be thoroughly persuaded, that you are masters of the subject before you. Your last attention should be, to express your resolutions, with good sense and decorum.

That you have failed in every requisite, is what I shall now endeavour to demonstrate, in the course of the following sheets. If it shall appear that you have transgressed the bounds of your jurisdiction, that you have ventured to decide upon a matter, of which you might be *presumed* to have been incompetent judges, and concerning which you have expressed yourselves both ignorantly and indecently, you cannot then be offended at the freedom of an individual, who points out your indecorums and absurdities, with a view of inducing you, for the future, to keep within the proper line of your duty and understanding.

I will first beg leave, Gentlemen, to premise that, at your original creation, it could never be intended that you should interfere with business, which does not concern the government of the City of London. The law will tell you, common sense will tell you,
your

your very *name* will tell you, nay, the *oath* which you take, will instruct you, that it is your duty “to give true *council* for the common interest of the *City*.”—And not of the nation at large.

It is in the Court of *Common Council*, Gentlemen, that laws are to be made for “*the advancement of trade*”, and the regulation of the internal police of the *City*. The wisdom of government, with good reason, entrusted you with the management of those concerns, which, from your education and habits of life, you might be supposed best capable of directing.

We may infer, from the very definition of a corporation, that these are the *proper* objects of attention, which should employ every corporate body: For a *corporation* is defined to be—“A body politic, consisting of material bodies, which, joined together, must have a name TO DO THINGS WHICH CONCERN THEIR CORPORATION.”

Little was it ever supposed, at their original creation, that any Corporation would dream of erecting *imperium in imperio*, and assume self-delegated authority, by making *their jurisdiction* the *dernier ressort* in matters foreign from the obvious design of their institution.

tution. Much less could it ever be imagined, that the *Court of Common Council*, would arrogantly draw the decisions of the supreme courts of justice, before their *Court at Guildhall*, and presume to sit in judgement on the Judges of the Land!

These events were at that time unforeseen. Such dangerous and unwarrantable attempts, were reserved for these days of disorder, when licentiousness, the rampant offspring of opulence, overleaping the bounds of the constitution, dares to invade the province of the legislature.

That I may not be suspected, Gentlemen, of drawing forced inferences, by means of partial quotations, I shall fairly transcribe your resolutions, as they appear in the public papers: beginning with that which is first in order, and not the least exceptionable of the two.

At a Court of Common Council at Guildhall, London, Feb. 21, 1764.

"*Resolved*, That the thanks of this court be presented to Sir Robert Ladbroke, Knt. Sir Richard Glynn, Bart. William Beckford, Esq; and the Honourable Thomas Harley, Esq; the Representatives of this City, for their zealous and spirited endeavours

deavours to assert the rights and liberties of the subject, *by their laudable attempt* (last Friday) to obtain a seasonable and parliamentary declaration, *That a general warrant for apprehending and seizing the Authors, Printers, and Publishers of a seditious Libel, together with their papers, is not warranted by law.* AND to express* to them our warmest exhortations, that they steadily persevere in their duty to the crown, and use their utmost endeavours to secure the houses, papers, and persons of the subject, from arbitrary and illegal violations.”

That you, Gentlemen, as a Court of Common Council, have a right to instruct the Representatives of the City, I am bold to deny. It is true, though I am going to establish a doctrine which your favourite patriot has, both by his principles and *practice*, publickly disavowed; it is true I say, that a majority of a general assembly of constituents, have an undoubted right of transmitting instructions to their Representatives; and the records of antiquity furnish many instances, where the members of the House

* On the want of grammatical connection and correctness in this, and more particularly in the subsequent resolution, I shall forbear any criticisms. Probably the *Town-Clerk* held the pen: And he is too fine an orator, to write sense and grammar.

of Commons have excused themselves from coming to any resolution, till they had an opportunity of consulting their constituents. However this right may be disputed, I hope it will never be destroyed.

But what pretence have you, other than in common with the constituents at large, to prescribe a rule of conduct to the Representatives of the City ?

The representatives are chosen by the Livery-men. In order to be Common Council Men, it is not necessary that you should be of the Livery : And in fact, some of you are not of that body : Thus, though you have not even a vote for the election of members, yet you presume to instruct them.

- Admitting however, that you were all fellow constituents with the Livery-men, yet shall a little junto of about two hundred and forty, supposing you all assembled, presume to include the sense of near eight thousand ?

In short, Gentlemen, in which ever view your resolution is considered, it is an infringement of the rights of the Livery-men, an insult on your representatives, and a violation of the laws of the kingdom.—A violation

lation the more unpardonable, as your resolution concerns a right, in which every subject in the kingdom is equally interested, and which is so extremely foreign from the business of your corporation in particular.

This leads me, Gentlemen, to the matter of your resolution. You exhort your members to use their utmost endeavours to secure the houses, &c. of the subject from arbitrary and illegal violations. By which expressions you peremptorily and indecently determine the question, which is still depending before the legislature.

It is but charity to conclude, however inaccurately you express your meaning, that you conceive the warrant in dispute to be arbitrary and illegal only in the case of a *seditious libel*. You surely would not be understood, that it is arbitrary and illegal to enter houses, seize papers, &c. in all cases; even on suspicion of *treasonable* or *traitorous* attempts. You cannot be ignorant that unless such a power is lodged in government, traitors may, with security, concert schemes for its subversion: And, what speaks more loudly to your interest, your very existence as a corporation may be destroyed.

But if it is, in your high judgments, Gentlemen, arbitrary and illegal, to enter houses,

houses, seize papers, &c. on presumption of a seditious libel, with what propriety could you come to the next resolution following?

Resolved, That “ As the independency and uprightness of judges is essential to the impartial administration of justice, and one of the best securities to the rights and liberties of the subject,” THIS COURT, in manifestation of the just sense WE entertain of the inflexible firmness and integrity of the Right Honourable Sir *Charles Pratt*, Lord Chief Justice of his Majesty’s Court of Common Pleas, DOOTH direct that the freedom of this City be presented to his Lordship, And that he be desired to sit for his picture to be placed in Guild-hall, in gratitude for his *honest* and *deliberate* DECISION upon the validity of a warrant which had been frequently produced to, but so far as appears to this Court, never debated in the Court of King’s Bench, *by which* he hath eminently distinguished his *duty* to the King, his justice to the subject, and *his knowledge of the law.*”

One might conclude from this resolution, pardon me, Gentlemen, that your recollection of past transactions is as faint, as your knowledge of more recent proceedings is imperfect. It is not long since Lord Chief Justice *Pratt* held the office of Attorney-General,

General, which he had the honour to fill with the applause of his countrymen, who dignified him with the name of the *Patriot Attorney*. It may possibly occur to your memory, that while he enjoyed that high office, the house of a subject was entered, his papers were seized, and his person imprisoned on the presumption of his being the author of a seditious libel, of which he was at length legally convicted. Can it be supposed that the then Attorney General, would have carried on a prosecution founded on arbitrary and illegal proceedings? Was his knowledge of the law ever doubted? Were his integrity, his humanity ever called in question? Wherefore then do you obliquely cast so severe a reflection on the distinguished personage, whom, one would imagine, you meant to compliment.

I could remind you likewise of other warrants, of a much more general and dangerous tendency, than that you would allude to; warrants too, which were issued under the seal of a late patriot minister, assisted by his favourite the patriot Attorney. But as the former has publickly pleaded guilty, and put himself upon his country, to the mercy of his country I leave him.

With regard to his Lordship's decision, to which you refer in this resolution, you

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are no doubt possessed of it; though it is not easy to conjecture by what means you became regularly masters of it. For my own part, I confess myself a stranger to this decision, which I had no opportunity of hearing; having in truth, little curiosity of attending Courts of Justice on such tumultuous occasions.

But whatever this decision was, I will readily believe that it was both honest and deliberate. Nevertheless, admitting this, yet your conclusion by no means follows. Your inference, Gentlemen, is much wider than your premises. For the decision may have been, as I trust it was, honest and deliberate, and yet, by such decision, his Lordship may not have eminently distinguished his *knowledge of the law*. Who does not see, that, on the contrary, it may have been honest and deliberate, and yet at the same time be unprecedented, injudicious, inconsistent, and erroneous?

Permit me to add, Gentlemen, that by determining how far a judge has distinguished his knowledge of the law, you claim a degree of intelligence equal, if not superior, to the reverend sages who fill the seats of judicature. And you will pardon me, if I ask you by what extraordinary lights, you have acquired such transcendent knowledge, in a science

science so foreign from your professions, and, one might presume, from your educations? I own I am at a loss to conceive from whence you could derive such astonishing powers; unless you were suddenly enlightened by your sagacious and eloquent *Town-Clerk*, who is master of “the Key of Knowledge, and the Touch-stone of Truth.”

Were we inclined however to acknowledge your capacity, yet, with what propriety can we admit your right? By what authority do you presume to review the decisions of the King’s courts? By what law of the constitution, do you determine the legality of such decisions? I have heard of many courts of appeal, but that of the Court of Common Council of the City of London, is a supreme judicature to which I have hitherto been a stranger: And I congratulate my countrymen, on the erection of a tribunal composed of *Heaven born lawyers*.

But your presumption, Gentlemen, is not confined to your unwarrantable intermeddling with the decision of the Common Pleas; you venture further to affirm, that the object of that decision has been frequently produced to, but so far as appears to *your* Court, never debated in the Court of *King’s Bench*.

The meaning of this invidious insinuation, is too obvious to need a comment: And we can but admire the extreme confidence of the members of this new judicature; who, from behind their counters, presume to know what passes in his Majesty's Courts at *Westminster*, and to pronounce peremptorily on the legality of such solemn proceedings.

In short, Gentlemen, you must excuse me, when I am bold to declare that your resolutions, in whatever light they are considered, are assuming, indecent, absurd, unconstitutional, and dangerous.

With what reason therefore can you suppose, that Lord Chief Justice *Pratt* will comply with your ridiculous desire, by fitting for his picture? What! can you imagine that his Lordship will *literally* lend *his countenance* to men, who have indirectly pronounced his practice in a former station, to have been arbitrary and illegal.—To men, who have offered him the grossest insult in his high office of Chief Justice, by presuming to judge of the *honesty*, *deliberation*, and *legality* of his decisions.—To men, who have violated the order of government, and usurped to themselves a power unknown to the constitution.—Can you presume that his Lordship will submit to be the *willing instrument* by which faction would shew its contempt

tempt of government?—No: never expect that he will so far disgrace his character by such an indiscreet condescension. His good sense, his pride; nay, his duty to his King and country, forbid it.

Let not the freedom of my animadversions be construed into a disrespect for the Court of Common Council, as such. While you, Gentlemen, who are members of it, keep within your proper province, you are useful and respectable in your politic capacity. Many of you, I am persuaded, claim esteem and respect likewise in your private capacities. The Court, whose resolutions I condemn, is improperly called a Court of Common Council. It is a Court, which hath not yet obtained a name: And which I hope will, for the future, be unknown to this kingdom.

It is not difficult, Gentlemen, to account for the manner in which you have been betrayed into this usurpation. Well might you mistake your business and importance, when one of your turbulent abettors, ventured to affirm in a certain assembly, that you were, in weight and consequence, second to none but the legislature.

Alas! Gentlemen, you have been misled by a clamorous and shallow Member, who

B E L L O W S

BELLOWS forth the spirit of faction, and is the tool of tools, for many removes, till we come to him whose very tone of voice proclaims the vulgarity of his soul; and who, born to command slaves, is himself a servile agent to the artful mover of opposition, who, concealing the designs of dark ambition beneath the affected gloom of retirement, secretly and ungratefully practises against the honour of his King, and the quiet of his administration.

But however you are to be pitied, Gentlemen, for having suffered yourselves to be betrayed into such unwarrantable resolutions; you must nevertheless be responsible for all their ill consequences. You may perceive, that the contagion of your ill example has spread already; and has been followed by the corporation of *Exeter*, who have voted the freedom of that City to Lord Chief Justice *Pratt*, for, what they call, "his noble and impartial conduct in the cause of liberty."

What we are to understand by the cause of liberty, the Gentlemen have not thought proper to explain: But I shall forbear to make any comment on the vote of this corporation, as I have sufficiently expressed my sense of such proceedings, in my animadversions on the resolutions of you, Gentlemen of the Common Council.

I wish

I wish that Lord Chief Justice Pratt's Letter to the City of *Exeter*, could likewise be passed over in silence: But the character of the writer is so distinguished, and the contents of that Letter are of such an extraordinary nature, that it would be unpardonable to treat it with indifference. The Letter, as published in the daily papers, runs thus

Lincoln's Inn Fields, March 1, 1764.

" SIR,

" I received the favour of yours this post, imparting the unanimous resolution of the chamber of Exeter, to present me with the freedom of that antient and respectable city; for which I beg you will be pleased to return my most respectful thanks, and to inform the chamber, that I feel an uncommon pleasure in this testimony of good will from the City of Exeter, as it is the capital of that county where my father and all his ancestors took their birth, and where I myself heretofore received an encouragement in my practice far beyond my merits.

" IF I have deserved, in any part of my conduct, the approbation of my countrymen, as an honest and impartial judge, I shall not be ashamed to confess, THAT I take

take a pride in THAT applause THAT flows from an opinion of my integrity, leaving the praise of capacity to others whom God hath endued with more shining parts, and superior abilities.

“ I can make no other return (and I know the chamber of Exeter expect no other) for this valuable compliment, than a promise to persevere in an upright and impartial execution of my office; and I hope this promise will obtain some degree of credit, when it is considered, that by deviating from this path, I shall not only forfeit the esteem of your City, which I am now so honourably possessed of, but shall likewise disgrace my Royal Master’s nomination, *and break my oath.*

I am, SIR,

With all due Respect to yourself,
as well as the Chamber,

Your most obedient faithful Servant,

C. P R A T T.”

It is impossible for any one, who has the least partiality to his Lordship, to read this letter, without the most extreme concern. For my own part, I am ready to confess, that I have ever considered his Lordship, in his

his judicial capacity, as candid, patient, intelligent, unaffected, persuasive, engaging, and amiable.

As a Judge, I have ever reverenced him, both from duty and inclination: But if a Judge, if a Chief Justice, will descend from his high station, it is impossible not to treat him on the level to which he has degraded himself: And I am sorry to say, that in whatever light we examine the letter in question, it lowers our idea of it's author.

In this letter, there is a presumption wantonly displayed, through a modesty awkwardly affected. If we consider the writer as a Judge, where is the dignity of his character? If as a scholar, where is the elegance of composition? If as a citizen, where is his regard for public order and decorum?

Can his Lordship be ignorant, that they who compliment him for his decision to-day, have the same right to brand him for his adjudication to-morrow? And will he concur, in exposing the judgments of the high courts of Westminster, to the review of every petty corporation? Would it not have been more noble, more conformable to his duty, to have checked such illegal usurpations? Can popular applause have so fas-

cinated his excellent understanding, as to prevent his perceiving that his encouragement of such absurd and irregular addressee, has a dangerous and unpardonable tendency, to cherish that factious and licentious spirit, which is impatient of all just, legal, and constitutional restraint?

As to the particulars of his Lordship's letter, we may readily excuse his partiality to the capital of that county, where all his ancestors took their birth.

But, not to insist on trivial objections, how can we reconcile the next paragraph to any rules of sound judgment, or nice decorum? "If," says his Lordship, "I have deserved, &c." IF!—Surely his Lordship best knows whether he does deserve it or not.—His honesty and impartiality may, nay must be a matter of opinion, with regard to the corporation of *Exeter*, however penetrating that body politic may be: But with respect to his Lordship, his degree of merit on account of those qualities, must be a certainty; and is only to be estimated by the testimony of his own conscience. No man, it is true, can be presumed a competent judge of his own capacity, but of his honesty and impartiality, no one can determine so well as himself.

His Lordship however carries the affectation of modesty much too far, when he leaves the praise of *capacity* to others. Is it not essential for a Judge to be, and to be thought, capable, as well as honest? Can his Lordship be ignorant, that, by his want of that capacity which he leaves to others, his royal Master's nomination would be disgraced?

But after all, this is a vain affectation which can impose upon nobody. Would a Judge, conscious of the least incapacity, have ventured to determine a most intricate and important case, in the common course of business, when he might, with the greatest propriety have called in the assistance of all his brethren? No one will ever be weak enough to imagine, that his Lordship is indifferent to the praise of capacity. This affected sentiment must therefore have been forced in, with what view I know not: perhaps only to round the period.—I hope, at least, that it was for some such innocent purpose.

The *natural and obvious construction* of it, I am persuaded his Lordship was not aware of, and will never avow. He could never mean to insinuate, that there are *others*, who are praised for shining parts and superior abilities, who are nevertheless deficient in that

integrity, on which he so modestly prides himself. He must be too well acquainted with his brethren, not to know that the several seats of judgment, are honestly, ably, and impartially filled.

Besides, I trust that his Lordship is a better philosopher, than to imagine that capacity is any bar to integrity. With the greater abilities any man is endowed, the sooner he will discover the various relations of moral duties, and the more firmly he will be persuaded, that it his interest to observe them.

There are instances, it is true, where an immoral practice, has disgraced an excellent understanding; but, in general, the ablest men, have been the best: And I could, without offence to his Lordship, point to a Chief, whom God hath indeed endued with shining parts and superior abilities, and whose integrity nevertheless is as unimpeached, as his capacity is unquestioned; who discovers the merits of a cause with amazing acuteness, and who omits no opportunity of expressing a becoming indignation, at the least appearance of a practice, which he conceives to be repugnant to the principles of justice, and injurious to the honour of the profession.

One might wonder how a man of Lord *Pratt's* judgment and experience, could give room to such an exceptionable sentiment. But indeed he appears, in every part of this letter, greatly below himself.

In the last paragraph, where his Lordship promises to persevere in the upright execution of his office, who would not imagine that some petty ministerial officer, was here proclaiming his attachment to his patron, and doing fealty for his office? Who will not acknowledge, that this is rather the stile of a servile *Tide-waiter* *, than of a reverend judge.

But the sentence, alas! goes on *pari passu*, till at length it crawls to a conclusion, and ends with four flat monosyllables.

You see, Gentlemen, the fatal effects of your intoxicating applause. The grave, the reverend, the learned judge, is no longer himself. Stunned with the echo of your plaudits, he is deaf to the remonstrances of his own better judgment.—*Heu! quantum mutatus!*

Such will ever be the consequence of an intemperate fondness for popular applause.

* I caution the reader not to take this word in a *figurative* sense.

They

They who build their reputation on the fickle and fluctuating opinion of the giddy multitude will, like them, act lightly, injudiciously and inconsistently.

Judges should, above all others, guard against such a dangerous intoxication. The maintaining of that nice balance on which our constitution should be poized, depends, in a great degree, on their just and discreet administration. It is one of their principal duties, no doubt, to watch over the liberties of their fellow subjects; but it is not less their duty, to pay a becoming attention to the honour of the crown, and the order of government.

Such a wise and equal conduct alone, will recommend them to the favour of the judicious and dispassionate; such alone, will secure them a permanent reputation, and transmit their names with honour to posterity.

But should it ever happen, that a judge should court the people, at the expence of his master's honour; should he, though ever so indirectly, afford countenance to delinquents, who have offended against the dignity of the crown, and the laws of the constitution; should he be instrumental in raising jealous and dangerous distinctions between

tween his Majesty's courts; should he, in an unprecedented manner, determine points of a new impression and of the utmost consequence, without any consultation or conference with his brethren of the other courts; should he, after having pronounced judgment according to the duty of his office, stoop to harangue the gaping multitude, upon a favourite topick; should he indiscreetly prognosticate that his judgment might be reversed—And, after thus anticipating the sentence of the supreme judicature, presume to add, that such sentence would be a rod of iron over the people of England.—If ever any one should thus comport himself, more like the advocate of a party, than a judge of the land, he may be assured that he will immediately forfeit the good opinion of the wise and moderate, and that his fame even among the vulgar, will be transient. Though popular honours should be heaped upon him, and presented in golden boxes, yet he will find those boxes to be like the present to *Epimetheus*, and he will live to curse the *dona ferentes*.

*Ld. Ch. Jew
Bratt's exec*

I would not however, Gentlemen of the Corporations, be thought to insinuate that your golden presents will be attended with such baneful effects. Your valuable gifts and compliments are bestowed from a persuasion, and I trust a well grounded one,

of

of Lord Chief Justice *Pratt's* having pursued a conduct quite opposite to that, by which, for the sake of illustration, I have supposed it possible for some judge hereafter to be influenced. Yours, as you declare, are given in gratitude for his honest and deliberate decision.

I have already expressed my confidence, that the decision was as you represent it, though I have had no opportunity of making myself acquainted with it. Besides was I actually master of it, yet I should not think myself warranted in making any public comment upon it, unless it came to me properly authenticated under the sanction of the court: For I am not clear, I speak with all due deference to you Gentlemen of the Common Council of London, I say I am not altogether clear, that it would not be construed a contempt of the court, should their decision be misrepresented in the least particular.

Thus much however, I may venture to say, though I have not the honour to be a member of the Common Council, that a late decision respecting privilege of Parliament, was erroneous, because it stands in effect condemned by the resolution of the supreme judicature in this kingdom.

The

The reasons on which this mistaken determination was grounded, I am wholly unacquainted with. Such as have been frequently made public, are not these, I am persuaded, on which the Court delivered their opinion.

In the argument which has appeared abroad, the authority of Lord *Coke* is principally relied on, to prove that privilege of Parliament generally holds, unless in three cases, viz. *Treason*, *Felony* and the *Peace*: In support of which *dictum*, his Lordship, in the margin, is said to have referred to a record of *Hen.* the 6th.

The person supposed to deliver this argument confesses, that he has not been able to have recourse to the original record, but he cites *Cotton's Abridgment*, where there is a note in corroboration of Lord *Coke's* *dictum*.

But if he had not seen the original record, was it not his duty to have inspected it, before he ventured to ground an opinion upon a *dictum*, the authority of which depended wholly on that record,? Can he be justified in referring to an *Abridgment*, which they who have had occasion to consult it, know to be erroneous in a variety of instances?

*L. Bratt
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ving an
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was.* Had he swept away the cobwebs, if I may adopt a phrase, which was, with more vivacity than decorum, used by a great lawyer in a certain august Assembly; I say, if he had swept away the cobwebs, that is, in other words, if he had examined the record, he would have found that it expressly proved the contrary to Lord Coke's dictum: And this duty was the more indispensable, as it is well known that no writer whatever is more faulty in his references to records than Lord Coke, as *Prynne* in particular has manifested by innumerable instances.

Upon inspection of this record, it would have appeared that the party therein mentioned, who was servant to a member of the House of Commons, was not arrested on any criminal prosecution whatever, but in a civil action for debt: And that, with regard to the general and new claim of privilege, which the Commons prayed on this occasion—"That they and their servants should not, for the future, be any ways arrested or detained in prison, during the time of Parliament, except for *Felony, Treason or Surety of the Peace.*"—This claim was wholly rejected. The answer was, *Le Roy s'advisera.*

Thus it appears from the authority of this record, that there is not the least foundation for the dictum of Lord Coke, or for the note in

in *Cotton's Abridgement*: On the contrary, it establishes a conclusion in direct opposition to both.

But Lord *Holt's* authority is likewise relied on; and he is made to say—That whereas it is said in *our books*, that privilege of parliament was not allowable in *Treason*, *Felony*, or *breach of the Peace*, that it must be intended where surety of the peace is required; that it shall not protect a man against a *Supplicavit*; but that it holds as well in cases of *indictments or informations for breach of the Peace*, as in case of actions.

With regard to this dictum, which can have been no more than a saying *obiter*, it rests on a very suspicious footing. In the report of the case, a Q. stands in the margin; and indeed it is greatly to be doubted whether any such opinion was ever delivered, more especially as it does not seem to have the most distant relation to the principal point. It is evident however, from the manner of his Lordship's introducing it, on the authority of *our books*, that he alludes to the mistaken dictum of Lord *Coke*, which Lord *Holt* probably never had occasion to examine with his accustomed accuracy.

Having endeavoured to establish this erroneous proposition on these fallacious au-
thorities,

thorities, the argumentator proceeds to examine how far a libel is a breach of the Peace ; and, after establishing a subtle distinction between an *actual* and a *constructive* breach of the Peace, concludes that a libel is of the latter kind, as it only tends to a breach of the Peace.

But in truth this distinction, which is altogether nugatory, implies a contradiction in terms, and was no doubt first raised by some subtle advocate to serve a present purpose. I would ask any man of common sense, whose judgment has not been perverted by law quibbles, Whether there can be a breach of the Peace, before the Peace has been *actually* broken ? I would ask him likewise, Which is the greater breach of the Peace, the holding up of one's fist or cane at another in a menacing way, or the publishing of a seditious libel, tending to raise traitorous insurrections ? How would he startle to be told, that the first, as an *actual* breach of the Peace, was not within privilege ; but that the latter, as *tending* only to a breach of the Peace, was a privileged offence ?

It is made a question however, whether a libeller may be obliged to find sureties for his *good behaviour* ? And it is said that *Dalton* enumerating many cases wherein it may be demanded, makes no mention of libels :

Thus

Thus the errors of some writers, and the silence of others, is made a foundation for an opinion on so important a point.

But Lord *Coke* says expressly that a libeller may be bound to his good behaviour. The reason of the thing however speaks stronger than any authority whatever. Besides, it is admitted on all hands, that persons may be so bound, for speaking words of contempt of inferior Magistrates, as a Justice of Peace, Mayor of a town, &c. though they be *not* in the execution of their offices.—And shall they not be bound for publishing a libel on some of the first Magistrates in the kingdom?

Lord *Coke* very properly distinguishes between a public and a private libel. “ If,” says he, “ it be against a Magistrate, or other *public* person, it is the greater offence; for that it concerneth not only the *BREACH OF THE PEACE*, but also the scandal of government.” It is a little strange, that they who shelter their opinion under his Lordship’s errors, should overlook his authority when he talks agreeably to law and reason.

But not to cavil about terms, and enter into nice distinctions between sureties of the Peace, and sureties for the good behaviour, it is clear that a libeller may, at least, be obliged

obliged to find sureties for the latter : And no claim of privilege can avail in case of a seditious libel.

Indeed a privilege to commit crimes, would involve the most palpable absurdity. It would be a privilege destructive of the very essence and well-being of society. In civil cases, it is true, there is good reason for admitting it, because it is impossible for a Member to avoid contracting debts : And a bad Minister may, at a critical juncture, prevail on creditors to arrest those from whom he expects an opposition.

But every Member may avoid committing crimes; and should a Minister procure his confinement on a groundless suspicion, a jury would, upon an action for damages, no doubt give such as might prevent those attempts for the future.

Besides, it is a weak pretence, to contend that the disallowing of privilege in case of libels, &c. widens the door for Ministers to make such attempts ; for the offences of treason, felony, and breach of the peace, leave an opening sufficiently wide for any Minister, who is wicked and daring enough to venture on such absurd and dangerous practises.

But

But the admission of privilege in such cases, is not only condemned by reason, but by authority.

It is expressly said in our books, that “ Privilege *cannot* be pleaded against an *indictment* for any thing *done out of parliament*.” And, both from reported cases, and from the journals of the House of Commons, it will appear that the claim of privilege does not hold in many cases, which cannot be brought under the description of *treason, felony, or breach of the peace*. The Parliament however, are the proper judges of their own Privileges; and to them it must be submitted whether privilege holds in cases of *Recusancy—Excommunication—Outlawry after judgment, &c. &c.*

From what has been said, it appears that the *dicta* in support of privilege, in case of a libel, &c. are fallacious, and that the authorities to which they refer maintain a contrary doctrine. It appears likewise, that such a claim of privilege is against reason and common sense, and subversive of the very ends of civil government: And lastly, it may appear, both from the authorities of law, and the resolutions of Parliament, that there is no foundation for confining the exclusion of privilege to the three cases above mentioned.

With what propriety therefore, could the noble personages who signed a certain paper, which

which has been industriously handed about, take upon them to assert, that the doctrine on which the resolution of parliament was founded, was new, dangerous and unwar-rantable?

Let no one imagine, however, that it is any imputation on a court of justice to have made an erroneous decision. It is no un-common thing, for the judgment of one court, to be reversed by the sentence of an-other. Besides, it must be considered, that the case in question was new, and of exceed-ing difficulty and importance.

These considerations, it may be thought, might have induced the Common Pleas to have declined, if possible, intermeddling with a case of a *criminal* nature; more espe-cially as it was *term time*, and the more *proper court* was then sitting. But it is my duty to believe that they were bound to take cognizance of it; for it would ill become me, who am no Common Council Man, to determine concerning the jurisdiction of his Majesty's Courts.

Nevertheless, I have met with a cas:, which I submit to the consideration of you Gentlemen of the Common Council, the next time you sit on judgment on the pro-ceedings of the courts at *Westminster*.

The

The case I allude to, is the case of *Rudyard*, in the Common Pleas, where—"The Court said, they had often directed, that no *Habeas Corpus* should be moved for in *this Court*, except it concerned a *civil cause*, because when the party was brought in and the cause shewn, this court cannot proceed upon it, therefore the PROPER PLACE to move for them is the KING'S BENCH.

If therefore the taking cognizance of the criminal case above alluded to, had been a matter of discretion, I appeal to you, Gentlemen, whether the directions of the Court, in the case of *Rudyard*, would not have been a reasonable apology for referring it to the more proper jurisdiction.

But if, as I am bound to believe, it was not a matter of discretion, the Court were undoubtedly under an obligation to determine it; and, in determining it, I am fully persuaded that they had nothing in view, but truth and justice: For it is impossible to conceive any circumstances in the case, which could give a bias to the opinion of the court.

Judges indeed have formerly been accused, and not without reason, of assisting to draw the reins of government too tight; but there is no precedent, where they ever have

concurred, nor is it *probable* that they ever will concur, in effecting a total relaxation of all civil discipline.

Nevertheless it may be possible to suppose a crisis, wherein an ill-grounded resentment, or mistaken gratitude, may give such a bias to a Judge's mind, as may influence him to act in opposition to the sound principles of his profession, and the real interest of his King and Country.

Suppose, for the sake of illustration only, that the nation should at any time hereafter be under the guidance of a bold, declamatory, rash, and ambitious demagogue; and that he should conceive a partiality for a lawyer, of somewhat congenial talents, florid, lively, presuming and enterprizing.—What if he should lead this favourite by the hand, till he advanced him to the highest honour an advocate can attain—And that the demagogue should afterwards, in a fit of disgust, suddenly abandon the administration? What if his successors, unable to draw with one whose bias to his patron would probably incline him to obstruct their measures, should oblige the favourite to quit his active and honourable employ as an advocate, and force greatness upon him in a more exalted and inactive station? Suppose him advanced to one of the chief seats of judg-

judgment, and that the busy agent of a factious Opposition, should, as the author of sedition, be *irregularly* brought before this darling of the party.—Who will say that, under such circumstances, resentment, against those who compelled him to accept of an unwelcome pre-eminence; disappointment, at being obliged to stop TWO STEPS, *Alas!* short of his ambition; gratitude, to those whose partiality would have exalted him to the topmost round; together with that fondness for popular applause, which never fails to intoxicate men of strong passions and lively imaginations--- Who will say that, without imputing any corruption to his heart, all these powerful motives co-operating might not pervert his judgment?

I hope, and I trust, Gentlemen, that we shall never live to see such an unhappy crisis, when they, whose duty it is to preserve the order of Society, shall afford encouragement to licentiousness.

Licentiousness is the bane of liberty. It is the ruin of that cause, of which the corporation of Exeter, headed by the Common Council of London, stand forth the champions. But they only are the proper assertors of liberty, who know its signification, and can ascertain its limits. The mad herd,
who

who shout forth the name, are strangers to its import: And it is not the interest of those who drive them, to define the meaning, or to proclaim the bounds of that liberty, which they abuse for their own private ends.

They have the address to represent every impediment which bars their way to power and profit, as an infringement of public rights: And the unthinking multitude will ever adopt the passions and prejudices of such as stand in opposition to government, as the only articles of their political creed.

But they who are sincerely anxious for the preservation of freedom, and who are sensible of its real estimation, know that popular licence, will as infallibly destroy it, as arbitrary will.

To avoid these two extremes, should be the principal object of attention in all mixed governments, and more especially in our own. Whenever, Gentlemen of the Common Council, any order of the constitution breaks loose from subjection to the laws, and arrogates unwarrantable power, liberty is from that moment endangered.

It is not material, Gentlemen, whether the invasion comes from the King, the nobles,
or

or the people; from whatever source it arises, it ultimately terminates in the same point, and is equally injurious and fatal to liberty. When unconstitutional attacks are made on one hand, resentment may dictate, or necessity compel, the adoption of illegal measures on the other: And whichever party prevails in the contest, tyranny is alike the lot of the public.

As popular usurpation infallibly begets anarchy, so anarchy unavoidably engenders despotism: And such is the natural tendency of every opposition; which, when not founded on public virtue, and regulated by that decorum which the laws prescribe, is the cause of its own destruction.

It is hoped that some true patriots will arise, warmed with a sincere zeal for the general good, and that they will guard the constitution, by resisting alike all usurpations, whether from the prince or the people. Such an impartial conduct may enable them to triumph over the malice of selfish opposition, and to silence the licentious clamour of party.

If we may judge from present appearances, such a conduct we may expect from the present administration. If acknowledged *M^r Grenville* abilities, unwearied application to business,
and

and a strict attention to public frugality, are any grounds for favourable conclusions, we may hope that they will acquit themselves to the satisfaction of their King and country.

Let no one however do me the injustice to imagine that I am an advocate for the Ministry; or that I am weak enough to imagine it impossible for them to change their principles and conduct. I only mean to observe, that, from what appears at present, their talents and dispositions seem properly adapted to our immediate exigencies. For it should be remembered, that the qualities which served us in time of war, would distress us in time of peace.

The most effectual means of making them persevere in their duty, is for their competitors to overlook their actions, with the vigilant eye of *emulation*. But a general and undistinguishing opposition to *all* measures, betrays more of enmity than competition; and can never be founded on the principles of public virtue. I hope to see Opposition directed to right ends, but never wish to see it expire: For, as was justly observed by a spirited and noble Lord, "Nothing is so dangerous, as an ‘intoxicating unanimity.’"





